

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST  
FOR REVIEW BY:

**VICCI L. KINNEY**

Petitioner.

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CHARGE NO.: 2008SF3568

EEOC NO.: 21BA82253

ALS NO.: 09-0438

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Munir Muhammad, Diane Viverito and Gregory Simoncini presiding, upon Vicci L. Kinney's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>1</sup> of Charge No. 2008SF3568; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request, and the Respondent's response to the Petitioner's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

**LACK OF SUBSTANTIAL EVIDENCE**

In support of which determination the Commission states the following findings of fact and reasons:

1. On June 10, 2008, the Petitioner filed a charge of discrimination with the Respondent in which she alleged her employer Lake Land College ("Employer") subjected her to harassment (Count A) and placed her on administrative leave (Count B) in retaliation for having opposed sexual harassment, in violation of Section 6-101(A) of the Illinois Human Rights Act (the "Act"). On July 8, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On August 10, 2009, the Petitioner timely filed her Request.
2. The Employer is a Community College which employs the Petitioner as a Constructions Occupations Instructor. The Employer has a contract with the Illinois Department of Corrections ("DOC") to provide training for DOC inmates throughout Illinois. Pursuant to this contract, the Petitioner was assigned to teach inmates at the DOC's Danville Correctional Center ("Danville") during the time in question.
3. The Petitioner alleged that from November 2004, through February 8, 2008, the Petitioner periodically verbally complained to her supervisor, Mary Nichols, Associate Dean, that one of her co-workers, who was a correctional officer at Danville, had been sexually harassing her.
4. In February 2008, the Petitioner's mother died. The Petitioner told Nichols not to attend the funeral. The funeral was held on February 28, 2008, which was a Saturday. Nichols attended the funeral accompanied by the correctional officer who had been allegedly sexually harassing the Petitioner. Later that same evening, at a local bar, the Petitioner confronted Nichols regarding her attendance at the funeral with the alleged sexual harasser. Nichols claimed the Petitioner grabbed her and used profanity.

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<sup>1</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

5. The Executive Dean, Tom Kerkhoff subsequently learned of the February 28<sup>th</sup> altercation between Nichols and the Petitioner. On March 1, 2008, Kerkhoff contacted the Petitioner at home and notified her that the Employer considered her actions of February 28<sup>th</sup> to have been insubordination. Kerkhoff informed the Petitioner that she was being placed on paid administrative leave, and that there would be a pre-investigation hearing regarding her alleged insubordination on March 14, 2008.
6. On March 14, 2008, during the hearing, the Petitioner told Kerkhoff for the first time that she was being sexually harassed by the correctional officer. Dawn Schlechte, the Employer's Director of Human Resources, also attended the hearing, and also learned for the first time of the alleged sexual harassment.
7. Thereafter, Schlechte began an investigation into the Petitioner's sexual harassment allegations. As part of her investigation, Schlechte asked Danville to reassign the correctional officer. Danville declined to do so. Rather, Danville informed the Employer that the Petitioner was required to remain off Danville's premises while the matter was being investigated. The Employer advised the Petitioner on April 14, 2008, that her paid administrative leave would continue pending investigation into her sexual harassment allegations.
8. In her charge and in her Request, the Petitioner contends in Count A that the Employer retaliated against her because she had engaged in protected activity, complaining of the sexual harassment, in that Nichols attended her mother's funeral after having been asked not to attend, with the Petitioner's alleged harasser, and Kerkhoff called the Petitioner at home and threatened her with disciplinary action. In Count B, the Petitioner contends the Employer retaliated against her by placing her on administrative leave on April 14, 2008.

## **Conclusion**

The Commission's review of the Respondent's investigation file leads it to conclude that the Respondent properly dismissed all counts of the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D).

As to Count A, actionable harassment occurs . . . "when the workplace is permeated with 'discriminatory intimidation, ridicule, and insult' (citation omitted) that is 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment (citation omitted)'. . . Harris v. Forklift Systems, Inc., 510 U.S. 20, 114 S.Ct. 367, 371, 126 L.Ed.2d 295.

The Petitioner argues the February 28<sup>th</sup> incident, in which Nichols and the alleged sexual harasser attended her mother's funeral, was "egregious" and thus rose to the level of actionable harassment. However, generally isolated incidents do not rise to the level of actionable harassment. See Franklin W. Lay and St. Mary's Hospital, 34 Ill.HRC Rep. 197 (September 25, 1987). While Nichols' actions on February 28<sup>th</sup> could be considered questionable and ill-conceived, the Commission does not find this single incident sufficiently severe to constitute actionable harassment. See Connie Rushton and Dr. Albert Trtjan, IHRC, ALS No.S-7977, December 10, 1997 (1997 WL 813060) (*Employer's isolated incident of kissing employee not particularly severe to a reasonable person to constitute actionable harassment*).

Further, there is no substantial evidence Kerkhoff harassed the Petitioner in retaliation for having engaged in protected activity. In order to establish a *prima facie* case of retaliation, the Petitioner must show: (1) The Petitioner engaged in a protected activity; (2) The Employer committed an adverse action against the Petitioner and (3) a casual connection existed between the protected activity and the adverse action of the Employer. Welch v. Hoeh, 314 ILL.App.3d 1027, 1035, 733 N.E.2d 410, 416 (3<sup>rd</sup> Dist. 2000). The Petitioner must also establish that the protected activity occurred before the adverse action. Pace and State of Illinois,

Department of Transportation, \_\_\_Ill. HRC Rep. \_\_\_, (1989SF0588, February 27, 1995) (Slip op. at p. 13); Bregenhorn and C.C. Services, Inc., ALS No. S10596, 2004 WL 3312882 at 6(Ill. HRC.Apr 2, 2004).

In this case, there is no substantial evidence of a causal connection between the Petitioner's protected activity and Kerkhoff's call to the Petitioner's home on March 1, 2008. The Petitioner admits she complained to Kerkhoff about the alleged sexual harassment for the first time on March 14, 2008. There is no evidence Kerkhoff was aware of the Petitioner's prior verbal complaints to Nichols. Therefore, assuming Kerkhoff committed an adverse act against the Petitioner on March 1, the evidence shows that the protected activity took place after the adverse action.

As to Count B there is no substantial evidence the Employer placed the Petitioner on paid administrative leave on April 14, 2008, in retaliation for having opposed sexual harassment. Assuming the Petitioner could establish a *prima facie* case of retaliation, the Employer articulated a non-retaliatory reason for its actions, which was that Danville required the Employer to keep the Petitioner off of its premises pending investigation into her sexual harassment allegations against Danville's correctional officer. The Employer was operating on Danville's premises, and there is no evidence the Employer had authority to ignore or override Danville's directive. There is no substantial evidence in the file that the Employer's stated reason for continuing the Petitioner's paid administrative leave was a pretext for retaliation.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Lake Land College as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 17<sup>th</sup> day of February 2010.

Commissioner Munir Muhammad

Commissioner Gregory Simoncini

Commissioner Diane Viverito